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August 5, 2016

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RE: Consistency in the RTP/SCS – Comments on the RTP Guidelines for MPOs, and for RTPAs

Dear Garth, Laura and Priscilla:

Consistency is essential to effective planning. It is also a legal requirement, and both state and federal law require regional planning agencies to engage in meaningful coordination at multiple levels. For instance, federal law requires MPOs to "carry out the metropolitan transportation planning process in coordination with the statewide transportation planning process,"[1] defining "coordination" to mean "the cooperative development of plans, programs, and schedules … and adjustment of such plans, programs, and schedules *to achieve general consistency*."[2]

In the context of regional planning, consistency takes a number of important forms. The RTP/SCS must demonstrate consistency not only with the California Transportation Plan (CTP), but also with local plans and projects, with the Regional Housing Needs Allocation (RHNA), and with local land use and development plans:

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[1] 23 C.F.R. 450.306 (f).

[2] 23 C.F.R. 450.104 (emphasis added).

1. **The CTP:** a specific function of the RTP is the "[p]romotion of consistency [with] the California Transportation Plan . . . responding to statewide and interregional transportation issues and needs".[3]

2. **Local projects and plans:** RTPs should promote consistency with "plans developed by cities, counties, districts, [and] California Tribal Governments".[4]

3. **The RHNA**: The RTP/SCS must be "synchronize[d]" with the regional housing needs assessment.[5]

4. **Local land use:** MPOs must "[a]rticulate regional land use [and] development" goals and plans.[6]

While the 2010 RTP Guidelines recognize the importance of consistency to achieving regional planning goals and meeting state and federal requirements, they do not provide pragmatic, directed guidance that will promote efficient coordination and facilitate legal compliance. If the Guidelines are to meet their primary purpose of promoting the achievement of "an integrated, statewide, multimodal, regional transportation planning process,"[7] more structured requirements and benchmarks for consistency between plans at all levels must be provided. Accordingly, **the new MPO and RTPA Guidelines should specify standards against which regional and state agencies can assess and ensure consistency in each of these four areas**. Language clarifying and enumerating requirements for minimum consistency between plans and projects should be added.

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[3] 2010 RTP Guidelines, pp. 9-10; *see also* 23 C.F.R. 450.306 (b)(5) ("The metropolitan transportation planning process shall . . . promote consistency between transportation improvements and State and local planned growth and economic development.")

[4] 2010 RTP Guidelines, p. 10.

[5] *Id*., p. 19; *see also* SB 375, Cal. Gov. Code § 65080 (b)(2)(B) ("The sustainable communities strategy shall . . . identify areas within the regional sufficient to house an eight-year projection of the regional housing need for the region [and] identify a transportation network to service the transportation needs of the region.")

[6] 2010 RTP Guidelines, p. 8. While local jurisdictions retain their land-use powers under SB 375, local land use authority is subject to the Housing Element Law (Gov. Code § 65580 *et seq*.) which requires local governments to accommodate their share of the RHNA at all income levels by amending their General Plans, zoning and development standards, and rezoning sites, as needed, to make them available for development. In addition, federal regulations require that MPOs "*confirm* the [regional] transportation plan's validity and consistency with *current and forecasted transportation and land use conditions and trends*" 23 C.F.R. § 450.324 (c) (emphasis added). *See also* Cal. Gov. Code § 14522.1 (b)(1) ("The [RTP] guidelines shall . . . account for . . . the relationship between land use density and household vehicle ownership and vehicle miles traveled [and] the impact of enhanced transit service levels on household vehicle ownership and vehicle miles traveled.")

[7] 2010 RTP Guidelines, p. 3.

We will propose specific language for implementing our comments with respect to the CTP, the RHNA and local land use later in the process. For the present, consistent with Principle 8 of the Guiding Principles previously submitted by two dozen stakeholder groups,[8] we propose language for the second, and a best practice relating to the fourth:

First, we propose (for inclusion in chapter 2, section 6) this language on consistency of transportation projects, programs and plans with the RTP/SCS:

1. *A non-exempt project included in an adopted Congestion Management Program or long-range countywide transportation plan is inconsistent with, and shall not be included by an MPO or RTPA in, the RTP/SCS, unless it will both (a) contribute to the RTP's reduction of GHG emissions and (b) demonstrably promote the land-use objectives of the RTP/SCS in general, and support transit-oriented affordable housing development in particular.*

2. *An MPO shall not incorporate into the RTP/SCS any project or program of projects proposed by an agency that is its subrecipient of federal or state funds unless that subrecipient, in its selection of that project, or its adoption of that program of projects, has (a) undertaken an accountable, inclusive and transparent process that complies with the region's adopted Public Participation Plan, (b) conducted an appropriate Title VI and Environmental Justice analysis of alternatives before selecting that project or adopting that program of projects, with the participation of affected low-income and minority residents, and, with respect to a program of projects, (c) determined that it will provide a fair and equally timely share of benefits to low-income residents and residents of color, and will not impose on them an unfair share of its burdens.*

SB 375 provides the legal basis for the first proposed provision, requiring consistency of projects with the SCS and its policies to reduce GHG emissions.[9] As noted in the 2010 Guidelines, that section:

> provides that projects programmed for funding on or before December 31, 2011, are not required to be subject to the provisions required in Government Code Section 65080 (b)(2), a Sustainable Communities Strategy and Alternative Planning Strategy … As a result, an MPO shall include exempted projects in their SCS for purposes of modeling the

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[8] Principle 8 reads: "Holding Local Planning Accountable to Regional Goals: The Guidelines should ensure consistency by holding local government and transportation agencies – including CMAs and sales tax authorities – accountable for the impact of their planning and funding decisions on GHG-reduction and housing production goals, as well as on sprawl, regional segregation and unequal access to opportunity. Regional plans should not incorporate – much less reward – local decisions that are inconsistent with regional goals. Conversely, regional agencies should incentivize local transportation and land-use planning and projects that promote regional goals. State funding should also better align with and support local projects that meet SB 375 goals." Available at http://www.dot.ca.gov/hq/tpp/offices/orip/rtp/index_files/7StakeholderGroupGuidingPrinciples_July17.pdf

[9] Cal. Gov. Code § 65080 (b)(2)(K). (The 2010 Guidelines contain a typographical error, referring to this as subdivision (L).)

> impacts of the RTP on regional greenhouse gas (GHG) emissions. *These projects, however, are exempt from the internal consistency requirement.* In other words, these projects *may be included in the RTP even if they are inconsistent with the SCS or other policies to reduce regional GHG emissions.*[10]

The July draft deletes this language and the entire section in which it appeared (2010 Guidelines § 6.16). **That section should be restored and retained**. In any event, the import of the statute is clear: projects that are not exempt from the internal consistency requirement may not be included in the RTP unless they are consistent with the SCS and its policies to reduce regional GHG emissions.

The legal basis of the second proposed provision includes, among other federal sources, FTA's Title VI Circular, which provides that "[i]f the MPO passes planning funds through to one or more subrecipients, the MPO is responsible for ensuring those subrecipients comply with Title VI."[11]

Second, we propose the following best practice with respect to consistency of the RTP/SCS with local land use (for inclusion in chapter 4, section 1):

> *Best Practice: MPOs and RTPAs should provide financial incentives to those local governments that promote land-use and affordable housing production consistent with the SCS. Those incentives should make a portion of regional transportation funding available only to those local governments that (1) adopt an HCD-certified Housing Element and commit to implement its action programs and report annually on implementation progress, (2) produce a substantial portion of their lower-income RHNA need, and (3) adopt effective tenant protections and other anti-displacement policies to ensure that high-propensity transit riders are not displaced from transit-oriented locations.*
>
> *MTC's OneBayArea Grant Program (OBAG) has implemented elements of this best practice approach. As amended in July 2016, OBAG provides a policy framework for awarding federal funding to projects that reflect regional transportation priorities and that support the goals set forth in Plan Bay Area.*

Thank you for the opportunity to provide this comment to inform new RTP Guidelines that will

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[10] 2010 RTP Guidelines, p. 115 (emphasis added).

[11] FTA, Title VI Circular (2012), Ch. VI, sec. 3. This is consistent with U.S. DOT's Title VI regulation, which provides that when "a primary recipient extends Federal financial assistance to any other recipient such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its [Title VI] obligations" 49 C.F.R. § 21.9 (b).

provide MPOs and RTPAs with clear direction for ensuring consistency in these important respects.

Very truly yours,

Richard A. Marcantonio
Public Advocates Inc.

Cc: Susan Bransen, CTC (by email)